



June 14, 2000

Mr. Robert L. Scott  
Attorney at Law  
P.O. Box 1353  
Greenville, Texas 75403-1353

OR2000-2330

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136981.

The City of Greenville Police Department (the "department"), which you represent, received a request for information relating to six incidents. The department's brief to this office addresses only one of the six incidents listed in the request; thus, we assume that you have released all other responsive information to the requestor.<sup>1</sup> You claim that portions of the information submitted, an offense report related to one of the listed incidents, are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information appears to be criminal history report information ("CHRI"). Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained

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<sup>1</sup>If the department has not already released all other existing, responsive information to the requestor, it must do so now. *See* Gov't Code §§ 552.301(e), .302.

from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). You must withhold, under the above-referenced provisions, the CHRI in the submitted materials.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov’t Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that “no arrests have been made in this case,” and it appears from the documents that this case is presently inactive, but may be re-opened with the discovery of new leads. Your brief strongly implies that this case will be prosecuted; therefore, if this investigation remains active or the prosecution is pending, we believe that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” *Id.* In that scenario, the department may withhold most of the highlighted information in the offense report under section 552.108(a)(1).<sup>2</sup>

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You argue that all witness identifying information as well as all witness statements should be withheld from disclosure, and state that release of this information could result in “the reluctance of the witnesses to further participate in the prosecution or the revelation of information known only to the witnesses and law enforcement authorities.” We note that the identification and description of witnesses and detailed witness statements are not among the types of information that are considered basic information and may be withheld. *Id.*; *see* Open Records Decision No. 127 at 4 (1976). You must release the basic front page offense and arrest information. The department has the discretion to release all or part of the remaining information that is not otherwise confidential by law.<sup>3</sup> Gov’t Code § 552.007.

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<sup>2</sup>We note that some information appears to have been released through a “Crime Stoppers” report. The department may not now withhold any information that has already been released to the public. Gov’t Code § 552.007(b).

<sup>3</sup>Please note that section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold all Texas

In summary, the department must withhold all CHRI found in the submitted materials. If the investigation in this case remains active or prosecution is pending, the highlighted portions of the offense report may be withheld under section 552.108(a)(1); however, basic information must be released pursuant to section 552.108(c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

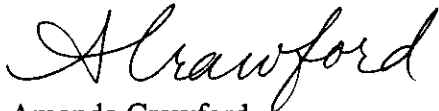
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

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driver's license numbers, license plate numbers and VIN numbers.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/nc

Ref: ID# 136981

Encl. Submitted documents

cc: David M. Hoffman  
4668 W. Gaylord, Unit C  
Oklahoma City, OK 73162  
(w/o enclosures)